



**STAFF REPORT**  
**A PRELIMINARY PLAT FOR THE WILLOWS**

Prepared September 28 for the October 11, 2012  
Board of County Commissioner Public Hearing

**OWNER:** Dream Catcher Estates, LLC      **AGENT:** Nelson Engineering

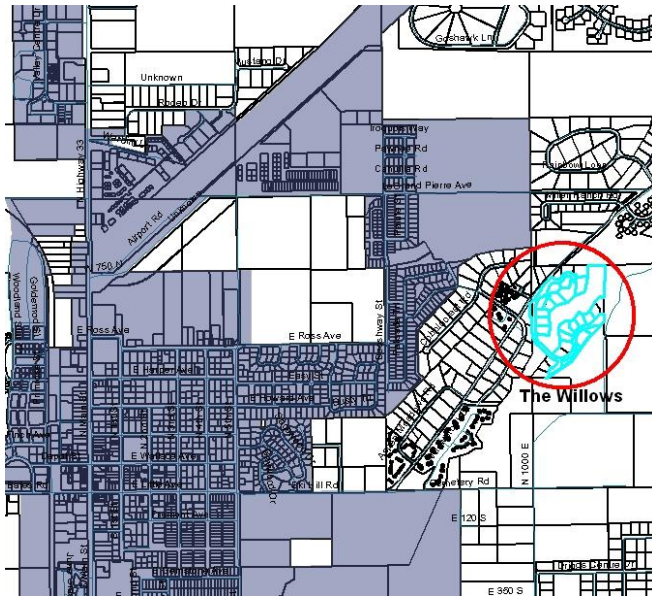
**REQUEST:** This Preliminary Plat application proposes 10 lots to be built in on the north side of Teton Creek. The 10 lots would be developed in three phases. This new plan for The Willows Subdivision would replace the recorded plat that has 22 lots distributed on both sides of the creek.

**CODES:** Teton County – Code Title 7 City Impact ordinance- Driggs; Ordinance 242 dated 03/24/2004

**LEGAL:** SW ¼, NW ¼, and NW ¼, SW ¼ of Section 30, Township 5N, Range 46E  
**DESCRIPTION** and NE ¼, SE ¼ of Section 25, Township 5N, Range 45E

**LOCATION:** Approximately one mile east of Cottonwood Corner on Ski Hill Road

**VICINITY MAP**



**ZONING DISTRICT:** This project is in the Driggs Area of City Impact and has two city zoning designations: ADR 1.0 (21.2 acres) and ADR 2.5 (26.3 acres)

**OVERLAYS:** Driggs Design review Overlay. Also mapped as Floodplain- Special Flood Hazard Area, Songbird/Raptor Breeding and Wintering Habitat, Big Game Migration Corridors and Seasonal Range.

**NUMBER OF LOTS:** 10 Residential Lots and an area reserved for future development

**LAND USE:** 10 residential lots- Area = 8.17 acres; Open space- Area = 24.23 acres; Right of way- Area = 6.67 acres

**TOTAL ACREAGE:** 47.53 Acres

**DRIGGS CITY RECOMMENDATIONS**

The Driggs City Council recommended **approval** of The Willows Preliminary Plat, subject to the five conditions of approval listed on page 2 of the four-page City of Driggs report dated April 17, 2012. Condition # 3 stipulates the vacation of The Willows recorded plat.

**COUNTY STAFF RECOMMENDATIONS**

Generally, the County Planning Staff agrees with the City of Driggs' recommendations and acknowledges the improved watercourse setbacks and reduced density. The applicant's proposed timeline now refers to plat application submission dates for getting the 10 lots competed. In reality, the timelines proposed would actually allow for several more months or years before the actual infrastructure would be completed. This is because there would be application processing and review time, plus possible extensions, plus the time period allowed between recording a plat and having to complete the physical installation of infrastructure. A timeline of 10 or more years for just ten lots that can connect to adjacent existing infrastructure is not consistent with the direction the Planning Staff has received from the Board in regard to distressed subdivisions. County Staff recommends that installation and completion of Phase 1 be finished by 2015 and completion of all infrastructure and public improvements for the ten lots by 2017.

---

## **BACKGROUND:**

- The Willows Final Plat was approved by the County on June 12, 2008 and recorded over a year later on June 15, 2009.
- Substantial improvements of the road, water, and power infrastructure within the internal portions of the subdivision have not taken place. Driggs officials report that a sewer main line located in Phase III and IV has been connected and accepted by the City. A wrought iron sign that spells “The Willows” has been built next to the undeveloped entrance. An earthen berm has been built along (and within) the Ski Hill Road right-of-way. Portions of it lie within the floodplain and are proposed to be removed or at least modified to reduce flooding on other properties.
- After being granted city and county extensions of time, the required public improvements have not yet been installed. The dates for completion have now exceeded the two-year time frame since plat recordation and should have been completed in June, 2011. The Driggs report states “The developer is in default on The Willows development agreement and in violation of the Driggs Subdivision Ordinance”.
- An active Letter of Credit for improvements is no longer available for the improvements that were originally designed and approved.
- The developer cites the unprecedented economic downturn in the local and national real estate markets for their failure to complete the subdivision and has been actively pursuing amending this project’s completion timeframes through the city and county processes. The developer has been involved with county and city staff to remedy the situation since before the completion dates expired.
- In seeking the requested time extensions, both the city and county have urged the developer to look at reducing the number of lots, increasing functional open space, increasing the environmental setbacks from the various creek channels, move building envelopes outside of the floodway, and agree to move a berm out of the 100-year floodplain. The changes that were sought are now depicted on the proposed preliminary plat. The dozen lots proposed and platted on the right bank (southeast) of the creek have been eliminated as well as a proposed bridge and sewer line. An easement for a public pathway has also been added.
- A replatting ordinance did not exist as a process within the City of Driggs, so this down sized project, proposed as a preliminary plat, would replace the existing recorded final plat. The street, street drainage, sewer, water and dry utility infrastructure was previously engineered and approved and the infrastructure for Lots 1-10 on the north side of the creek has not had significant changes from the existing plat. As noted, infrastructure on the left side of the creek, including a vehicle crossing, has been eliminated from the application.

## **CONSIDERATIONS:**

### **New Development Phasing Agreement**

The timelines for construction in the existing Development Agreement have not been met and this preliminary plat proposes a revised timeline in a draft Development Phasing Agreement. It proposes dates tied to the submission of final plat applications. The new Phasing Plan consists of three phases for the 10 lots that would be developed on the right hand side (northwest) of the creek. The left bank area, platted with 12 lots, would be vacated and reserved for future development. Development of the

---

left bank lots would be subject to the applicable regulations in place in the future. The applicant's present proposal is to have the first final plat submitted within two years of preliminary plat approval (2014). Phase I is only three lots (lots 6-8). The Phase II would be submitted before the end of 2017; it includes Lots 1-5. Phase III consists of Lots 9 and 10 and would be submitted before the end of 2020. The applicant believes this extended period is needed in order for the real estate market to recover.

#### Staff Analysis

Staff recommends that the dates in the Phasing Agreement be changed from final plat application *submission dates* to infrastructure *completion dates* and *final plat recordation dates*. This means that a final plat for each phase could be submitted and approved by the Board before construction was complete. However, the Board would stipulate that the plat shall not be recorded until all infrastructure is installed, inspected and all lot monuments are in the ground.

It bears repeating: The final plat could only be recorded (and lots available for sale) once the infrastructure is complete and the lot monuments are in the ground. This requirement would therefore oblige the developer to begin construction earlier than what has been proposed in the original draft Development Phasing Agreement. Staff believes that the use of infrastructure completion and recordation dates will make for a more concrete time frame for actual subdivision completion than by using final plat submittal dates.

Staff recommends that the timeframe for completion of infrastructure and recordation of each of the three plat phases be as follows:

Phase I – Completed by 12/31/2015

Phase II – Completed by 12/31/2016

Phase II – Completed by 12/31/2017

The timeframes listed above move out the applicant's proposed Phase I final plat *submission* date of 2014 to instead become an infrastructure completion date of 2015. The last phase, Phase III, would have to be complete three to four years earlier than what is proposed in the applicant's phasing plan (2020 with process time and extension of 2+ years). Staff feels that defining a four year period to develop just ten lots is reasonable. County staff recommends adding a clause in the Development Agreement that would vacate the subdivision if terms were breached or deadlines missed- see the related condition of approval # 10.

County Attorney Kathy Spitzer has reviewed the draft document, which was based on the county's standard template. It should be noted that since the original Development Agreement was written there has been a change in County regulations and a final plat can no longer be recorded until the infrastructure is installed and complete.

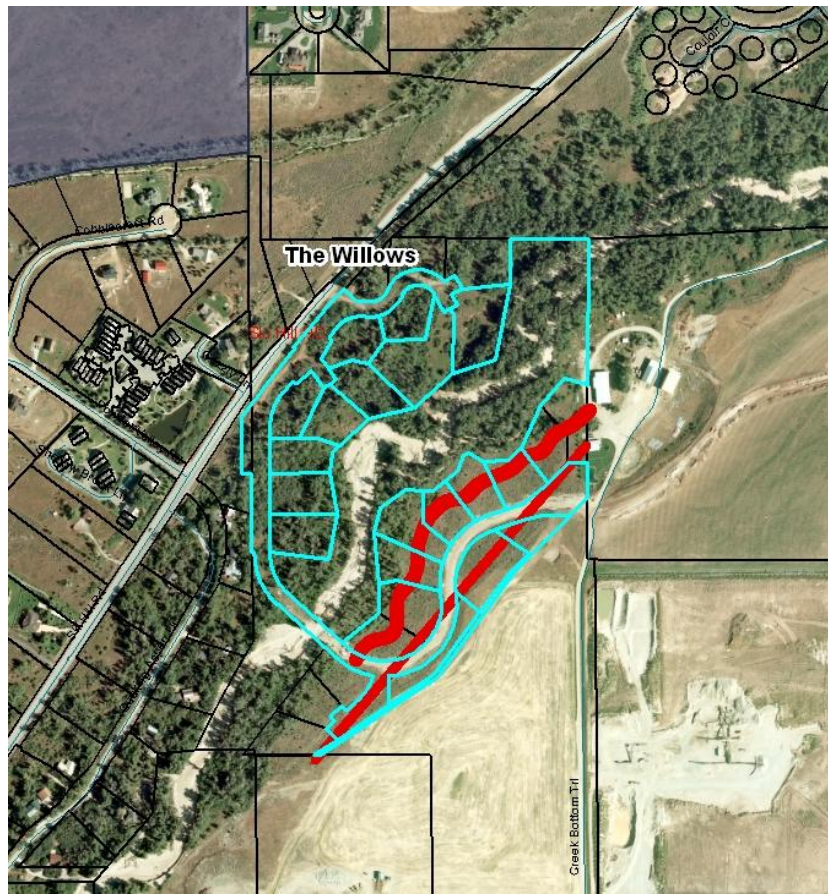
#### Berm

The existing berm built along Ski Hill Road is partially within the Teton Creek designated floodplain. The Driggs City Council recommended it be removed from the floodplain or else be officially permitted within the FEMA floodplain. During city review, there were questions about how the berm might affect drainage to nearby properties. The developer agreed to the City's condition that the berm issue be resolved. County staff would make the City's condition # 3 a bit more specific and require that the berm be removed or permitted prior to any Final Plat approval.

There are also file references to the berm being an encroachment within the Scenic Corridor Overlay, however the Area of City Impact's adopted Driggs zoning designations depict the area along Ski Hill

Road as the Design Review Overlay rather than one of the County zoning designations. According to Doug Self, the Design Review Overlay examines commercial and industrial type projects and not residential ones. Nevertheless, the visual concerns along the road would have been addressed in the subdivision review process through the required landscaping and re-vegetation regulations. The Driggs public record reflects that the berm was reseeded.

County Engineer Jay Mazelewski told county planning staff that the berm poses no functional problem presently but if “a four-lane Ski Hill Road” were someday needed, that area of the berm could be moved since it is in the county road right-of-way.



Recorded plat of The Willows shown: Lots on south side of Teton Creek would be vacated (red line) but reserved for future development. North or west side lots (river right bank) are proposed with larger open space buffers to the creek channel.

### **REVIEW OF THE APPLICABLE CITY ORDINANCES**

According to page 4 of the City of Driggs report, “the City Council finds that the proposed preliminary plat conforms to the Driggs Comprehensive Plan, Zoning Ordinance, and Subdivision ordinance and that the revisions recommended by staff have been completed”. It goes on to state: “The Amended Plat and Phasing Agreement will remedy a development that is in default and secure a more flexible development schedule while reducing impacts and increasing open space and pathways amenities”.

### **INFRASTRUCTURE SUMMARY:**

Water: The Willows obtains its water supply via the City of Driggs’s 8-inch water main that lies adjacent to the property on Ski Hill Road. The City of Driggs supplied a “will serve” letter dated May 6, 2012.

---

Sanitary sewage: This service would be provided by the City of Driggs via an 8-inch sewer line connection. The City of Driggs supplied a “will serve” letter dated May 6, 2012.

Streets & Access: Access to the ten lots is via one subdivision entrance which provides access directly onto Ski Hill Road.

Fire Suppression: Phase I proposes to construct a fire department turn-around for Lots 6, 7, and 8. The turn-around would be moved down the internal road as the road is built and elongated in the next phases. Fire hydrants supply fire-fighting water. The Fire Marshall stated that the road and water infrastructure should be installed and made serviceable prior to and during construction in accordance with Section 501.4 of the International Fire Code. County Staff has added this requirement and interpreted it to mean that no building permits shall be issued prior to a satisfactory inspection and approval by the County Engineer and Fire District Fire Marshall.

Wire Utilities: The Engineer’s Cost Estimate includes the installation of electric and phone lines.

Pathway: A public pathway has been added to The Willows plan and its cost estimate is over \$54,000, to be financed by the developer.

**PUBLIC NOTICE:**

1. Legal ads were made to the Teton Valley News in accordance with local and state requirements.
2. A development notification was mailed to the property owner in accordance with Idaho Code 67-6509 and 67-6511; it included those landowners within 300 feet and to those who own land within subdivisions within 300 feet of the subject property.
3. The site was posted in accordance with state statute.

**COMMENTS FROM NOTIFIED NEIGHBORS AND GENERAL PUBLIC**

Letters from adjacent landowners Fitzpatrick were entered into the public record during the Driggs public hearings; those correspondences and comments are attached. Mr. James Fitzpatrick brought up some issues that pertain to a private boundary agreement between three landowners, including Dreamcatchers LLC. Conditions of approval from Driggs City Council and County Planning may indirectly relate to the issues brought up. At the writing of this report, no other neighbors have responded. A letter from VARD dated June 8, 2011 was put on the public record.

**FINDINGS OF FACT:**

1. The Driggs City Council found this application to be in compliance with the City of Driggs Zoning and Subdivision Ordinances.
2. The reconfiguration of The Willows provides an increase in public benefits because:
  - a) Building envelopes have been redrawn outside of the FEMA floodway
  - b) A public pathway will be dedicated on the property
  - c) Increased open space along the creek will create more buffer between human activities and wildlife and will preserve more hiding cover and browse.
  - d) The removal of lots platted on the left bank of Teton Creek will delay encroachment of human activities to a critical wildlife habitat.
3. By being in compliance with the Driggs Subdivision and Zoning Ordinances, and being in the Driggs Area of City Impact, the proposed Preliminary Plat is also in compliance to the Zoning and Subdivision Ordinances of Teton County.





Close up view of The Willows “right bank” area on north/west side of Teton Creek. Note scoured and braided stream channel.

**BOARD OF COUNTY COMMISSIONERS ACTION:**

- A. APPROVE the application as presented and attach no conditions of approval.
- B. APPROVE WITH CONDITIONS the Board might add or modify the recommended conditions as deemed necessary based on items put forth on the public record.
- C. DENY the application and provide the reasons and justifications for the denial.
- D. CONTINUE consideration of the application to a future public hearing with reasons given as to the continuation or need for additional information.

**RECOMMENDATION:**

**Action B:** A motion that references the required findings in the code that this application, with the enumerated conditions can comply with all applicable sections of the Teton County Code and the Driggs Area of City Impact ordinance. Here is a suggested motion that could be used to approve the vacation.

*I move to APPROVE the Willows Subdivision Preliminary Plat application as described and depicted in the application materials contained in the review packet, subject to the conditions recommended by the City Council and with the conditions added by the County Planning staff.*

---

## **RECOMMENDED CONDITIONS OF APPROVAL**

### **Berm**

1. Portions of the earthen berm that have been placed within the floodplain or otherwise deemed by a P.E. to negatively augment storm water or stream flows to properties off site shall be removed from the one-hundred year floodplain prior to any Final Plat approval. The plat may be recorded only after an Professional Engineer licensed in Idaho documents that the berm is satisfactorily removed. *(City Council condition modified by County Staff)*

### **Vegetation**

2. Re-vegetation of the sewer easement be provided for the Phase I construction cost estimate as proposed. *(City Council condition)*
3. Any scenic corridor permit violations be remedied. *(City Council condition- the area in question is in the Driggs Design Review Overlay, which regulates commercial and industrial projects- not residential. However, Landscaping and re-vegetation conditions do apply to subdivisions)*

### **Annexation**

4. The applicants (owners) provide consent for future annexation of the property. *(City Council condition )*

### **Fire**

5. The four conditions called out in the Teton Fire Protection District's letter of March 7, 2012 shall be met. In particular, "the timing of installation of firefighting access roads and water supply shall be installed and made serviceable prior to and during the time of construction in accordance with Section 501.4 of the International Fire Code". *(added by County Planning)*

### **Final Plat**

6. The Final Plat is subject to technical review of the County's contract plat reviewer- All revisions identified shall be made prior to the recordation of the Final Plat. The plat reviewer or the Planning Staff may determine whether any required revisions are acceptable. The Final Plat shall not be released for recording until all invoices for plat review are paid and all infrastructure is deemed complete. *(added by County Planning)*

### **Development Agreement**

7. The Development Agreement shall acknowledge that the final plat cannot be recorded and no building permits shall be issued in the Willows Subdivision until each phase's infrastructure and public improvements are deemed complete and they obtain the Fire Marshall's, County Engineer's, and City of Driggs written approval. The release of surety for landscaping or re-vegetation shall not take place until the designated plantings can be determined to be successful. *(added by County Planning)*
8. The Phasing Agreement be amended to call out infrastructure completion dates (vs. final plat submittal dates) and requiring the first phase to have all infrastructure completed on or before 12/31/2015, the second phase to be completed by 12/31/2016, and the final phase be completed by 12/31/2017. *(added by County Planning)*.
9. In accordance with Section 17 of the Development Agreement, the applicant shall provide a letter of credit to the County covering construction, operation and maintenance of all the

---

specified public improvements listed in the engineering cost estimate. The amount for the Letter of Credit shall be 125% of the total. *(added by County Planning)*

10. The following statement: “In the event that the Developer breaches this Agreement, fails to perform any of the terms, conditions or obligations in this Agreement, or has not resolved a defect or deficiency under this Agreement, the Developer agrees to either cooperate with the County in revoking the Developer’s entitlements by vacating the plat for The Willows Subdivision Phase 2 or to be the applicant for such a vacation. In either case, the Developer agrees not to contest a vacation of The Willows Subdivision- Phase 2.” *(added by County Planning)*.

---

**Attachments:**

- The Willows application materials:
    - Preliminary Plat application form
    - Development Phasing Agreement
    - Development Agreement for the Willows
    - Preliminary Plat and Master Plan
    - Construction Cost Estimate
    - Letter of Authorization from Cutlers
    - Feb. 28, 2011 Letter about time extension
  - City of Driggs Packet to County Planning
    - City Council Findings, Conclusions & Recommendation
    - City Council Meeting Minutes (4/17/12)
    - City P & Z Commission Minutes (3/14/12, 8/24/11, 6/8/11)
    - City Council Hearing Notice
    - List of Property Owners w/in 300 feet
    - Draft Development Agreement
    - Water 7 Sewer Will Serve Letter
  - Agency Comments
    - Fire Marshall letter dated 3/7/12
    - Eastern Idaho Public Health Department- Mike Dronen letter – (he reviewed an earlier version of plan which proposed individual wells. City water is now proposed)
    - Email from Maureen Green, Treasurer’s Office
- Public Comments:
- James Fitzgerald letters (3/12/12, 8/23/12, 5/30/11)
  - Richard Berg Letter,  
Anna Trentadue –VARD letter (6/8/11)